COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Notice of Inquiry re: Billing Services	)	D.T.E. 01-28 (Phase II)

COMMENTS OF MASSACHUSETTS ELECTRIC COMPANY AND NANTUCKET ELECTRIC COMPANY

These comments by Massachusetts Electric Company and Nantucket Electric Company (collectively "Company" or "Mass. Electric") address the issues raised at the Department's technical session in the above-captioned proceeding.

I. Background

Section 312 of the Electric Restructuring Act of 1997 (the "Restructuring Act") required the Department to investigate whether opening metering, billing, and information services ("MBIS") up to competition would result in substantive savings to consumers with little or no disruption to distribution company employee staffing levels. Furthermore, it required the Department to report its findings to the Legislature, and prohibited the Department from allowing competitive MBIS without statutory changes.

The Department pursued its investigation of MBIS during 2000, and issued its report to the legislature on December 29, 2000. In the report, the Department concluded that billing-related services should not be unbundled from other monopoly services provided by distribution companies and provided by a competitive market because such unbundling: (1) would be complex to implement;

(2) would not produce benefits (i.e. a supplier single-bill option) that could not be produced through the existing regulatory framework; (3) may not result in cost savings to customers; and (4) would result in significant disruptions in distribution company staffing levels. Report to the General Court Pursuant to Section 312 of the Electric Restructuring Act, Chapter 164 of the Acts of 1997 on Metering, Billing and Information Services, at 27-32 (December 29, 2000) (the "MBIS Report").

On May 9, 2001, the Department of Telecommunications and Energy opened this proceeding to investigate the manner by which a supplier single-bill option may be made available to customers and suppliers within the existing statutory and regulatory framework. In addition, the Department intended the investigation to examine whether modifications should be made to the partial payment rules established in D.P.U./D.T.E. 97/65.

The Department held a technical session on June 7, 2001. At the technical session, the Hearing Officer requested comments and legal briefing on three issues: (1) whether the supplier single bill option is legally permissible under the Restructuring Act; (2) whether the Department's partial payment rules should be modified; and (3) whether distribution companies should be required to purchase the receivables of suppliers in order to facilitate debt collection. The Company addresses each issue below.

II. A Supplier Single Bill Option is not Permitted by Law

The Restructuring Act allows two kinds of billing: (1) complete billing, under which the customer receives one bill from the distribution company for distribution service, transmission service,

the energy efficiency charge, the transition charge, and the generation service provided by the competitive supplier, and (2) passthrough billing, under which the customer receives one bill for distribution service, transmission service, the energy efficiency charge, and the transition charge from the distribution company, and a second bill from the competitive supplier for generation service and any other services that the competitive supplier provides. M.G.L. c. 164, § 1D provides in pertinent part:

> Not later than six months after [March 1, 1998], in order to promote customer choice and convenience in a restructured electricity and gas market, distribution companies shall create and send bills to retail customers pursuant to either of the following bill options: (1) single bill from the distribution company that shows [generation, transmission and distribution] charges; or (2) two bills: one from the non-utility supplier that shows energy- related charges, and one from the distribution company that shows distribution-related charges. . .

The Department itself has taken note of this and its regulations spell out these two billing options. D.P.U./D.T.E. 97-65, p. 53, 220 C.M.R. 11.04(10). In both options, the distribution company sends bills to its customers.

At issue is whether this statute lists two options but does not preclude others, or whether this language encompasses the only two billing options allowed by law. The legislative history of this statute is instructive. On October 30, 1997, the Joint Committee on Government Relations reported out of committee a version of the Restructuring Act that would have authorized a supplier single bill. See House Bill 5080 (1997)(Attachment A). That provision did not survive later versions of the legislation, and was not ultimately enacted into law. Thus, the legislature made an active decision not to put the supplier single bill option in the law.

The Massachusetts Supreme Judicial Court has held that deletions of language from

predecessor bills are normally presumed to be intentional. Green v. Wyman-Gordon Company, 422 Mass. 551, 556, 664 N.E.2d 808, 812 (1996) citations omitted. In that case, the court found that prior to the enactment of the law at issue, eight different versions were proposed, and rejected plaintiff's argument that the statute should be read to allow something that had been explicitly stated in two of the eight proposed versions.

This case is directly relevant to the supplier single bill issue. While the earliest drafts of the legislation contained a supplier single bill option, later versions did not. The Department is bound to follow the presumption articulated in Green, and consider the deletion of the supplier single bill option an intentional legislative act. State agencies and political subdivisions have no authority to take a position or issue regulations inconsistent with existing statutory language. Church v. Boston, 370 Mass. 598, 601 (1976); Bloom v. Worcester, 363 Mass. 136, 155 (1973); Hellman v. Board of Registration in Medicine, 404 Mass. 800, 806 (1989).

In denying the competitive suppliers the right to send a single bill, the legislature upheld the long valued need for a direct relationship between utilities and their customers. Electric utilities provide an essential service to customers, the delivery of electricity, and the ability to send bills and communicate to customers through bills enhances the relationship. The Department has recognized the importance of the relationship, too, calling it a "stabilizing force." D.P.U./D.T.E. 97-65 p. 15. The Department requires the utilities to use the bill and the bill envelope to send a variety of notices to customer, including information about rates, terms and conditions for service, and other consumer rights. Department regulations provide detailed guidance about all aspects of customer billing. 220 C.M.R.

25.00 et seq.

While the supplier single bill option is not legally permissible, Mass. Electric has always accommodated requests from individual customers to send their bills to their designated agent. Designated agents include the adult child of an aged customer, the customer's accountant, or other legal representative. In these instances, although the Company sends the bill to the customer's agent, the customer remains the principal on the account and responsible for the bills to the distribution company even if the agent does not pay the distribution company. This relationship, with the Customer's designation of an agent, is permissible on its current small scale, but wide scale implementation of such relationships by competitive suppliers would circumvent the Restructuring Act's prohibition of supplier single billing.

III. The Payment Posting Sequence Proposed by the Department is Appropriate, but a Pro Rata Allocation of Partial Payments between Suppliers and Distribution Companies is not.

As stated at the Technical Session on June 7, 2001, Mass. Electric has implemented the Department's proposed payment allocation in complete billing so that from a customer's payment, Mass. Electric allocates it first to past due distribution amounts, second to past due retail marketer amounts, third to current distribution amounts, and fourth to current retail marketer amounts. Mass. Electric recommends this method as a solution to meet the concern of the retail marketers that they never will receive any monies from customers who make only partial payments.

Retail marketers have suggested that instead of this payment allocation, distribution companies

apportion payment proportional to the original charges. For example, if a customer's bill was $100, $60 or which was attributable to generation and $40 attributable to distribution, the retail marketer would receive sixty percent of the customer's payment and the distribution company would receive forty percent. The Department rejected this suggestion in D.P.U./D.T.E. 97-65, stating that

> protecting customers from complete termination of electric service outweighs our concerns about potential barriers to competition at this time. Also, the Department agrees with the Utility Companies that competitive suppliers will have means of avoiding bad debt expenses or receiving payment from customers that will not be available to distribution companies, such as preselecting customers and terminating service to customers who do not pay. Bad debt for distribution companies can become a cost of service borne by all ratepayers, so shifting the risk to competitive suppliers who can control the risk is fairer.

D.P.U./D.T.E. 97-65, p. 54.

Mass. Electric agrees with the Department. With proration, a customer's arrearage to the distribution company may not be fully paid since some portion of money is allocated to marketers. This creates confusion among customers who attempt to pay their arrears to the distribution utility in order to maintain their electric service and not have it disconnected for failure to pay for it. The payment posting sequence that the Department put forth at the Technical Session and that Mass. Electric has in place properly assumes that a customer wants its payment to be applied in a way that will maintain the continuity of service first. With a pro rata allocation, any payment less than the total amount due for distribution and generation service would not be applied in a way that would allow the customer to keep its service connected. In addition, the determination of a payment plan for the customer would become more complex and burdensome.

Customers will be further confused because the allocation of bill amounts may change from

month to month. A monthly electricity price from a marketer or a rate change from the distribution utility would change the allocation to customers. Also, different rate classes could have a different allocation percent. Customers who have more than one account on different rate classes would be further confused by the process.

Customers have the commercial right to choose when and how they should pay a supplier. For example, the customer may have a dispute with a supplier and not want to pay the supplier for reasons such as a genuine dispute of amounts due or in order to get attention from the supplier. The creation of a rule which forces some portion of money to be paid to a supplier will prevent customers from exercising their rights at times of dispute. A customer who disputes its distribution company bill has the right to bring a complaint to the Department's Consumer Division. The distribution company's rates, terms for service, metering, and billing are all regulated and monitored by the Department, and the distribution company must comply with them. No such oversight exists for retail marketers; instead, customers have commercial avenues to express their disputes. Thus, a customer should have the right to withhold its payments from a retail marketer, and, in those instances, proration of the customer's payment would misinterpret the customer's will.

In addition, just as customers may use commercial avenues to voice their disputes with retail suppliers, retail suppliers may use methods to collect money which are not available to regulated distribution companies. One of the main premises of deregulation was that retail marketers could remedy customer payment problems through contracts and incentives unavailable to the distribution utility. For example, the Department's regulations greatly restrict the distribution company's ability to

disconnect a customer for non-payment, whereas a retail supplier can enter into a contract with a customer which would allow for prompt termination of service in the event of non-payment. Marketers can return a non-paying customer to default service which by definition should be more expensive than competitive offerings. Marketers can provide incentives for prompt payment without worries of cross-subsidies or cost of service impact. Marketers can also provide discounts for prepayment of services. These and other creative avenues exist for marketers to solve non-payment problems.

During the Technical Session, marketers suggested that their supply revenues should be treated similarly to standard offer revenues and default service revenues. Marketers argued that competitive market options should receive revenue postings similar to distribution company postings for standard offer and default service. The Department requested information on how distribution companies post revenues against distribution company offerings (standard offer and default service) and marketer offerings. Mass Electric buys the standard offer and default service power monthly and pays suppliers regardless of what money it has collected from customers for the power.

It is incorrect, however, to compare distribution company obligations with the offerings of competitive marketers. First, the distribution company has an obligation to connect all customers and a legislative obligation to provide standard offer service and default service under regulated rates and terms for service. Marketers have none of these obligations. Second, the distribution company is in the wires electricity delivery business. It does not take risks in electricity service, unlike marketers who exist to take risks in the provision of electric services to customers. Third, marketers argue for similar treatment with respect to posting of customer payments. However, payment of marketers without

consideration of the health of the distribution utility would jeopardize the reliable delivery of electricity. For example, if Mass. Electric cannot pay its bills, it could face the same problems that the California utilities are facing. It is imperative that the distribution company pay all its bills. Fourth, as explained above, marketers have many opportunities to encourage payment by customers which distribution companies do not have.

Thus, in conclusion, Mass. Electric recommends that the Department adopt the cash posting sequence it proposed at the Technical Session and which Mass. Electric has put in place, and reject pro rata apportionment of partial payments in favor of business, not regulatory, solutions to non-payment for unregulated, competitive suppliers.

IV. The Purchase and Sale of Receivables should Arise Out of a Business Negotiation, not Regulation

During the Technical Session, retail marketers also suggested that a system for the purchase and sale of company receivables be established. The marketers reasoned that if utilities purchased the marketers' receivables, many of the problems discussed in the prior section would be solved. As Mass. Electric will discuss in this section, this suggestion may be a good solution for utilities and retail marketers, but should be determined based on a business arrangement negotiated by the parties and not by regulation.

Receivables are the amounts billed to a company's customers that the customers have not yet paid to the company. Receivables are bought and sold in many industries today. Typically, receivables are bought and sold at a discount to their face value, which reflects the risk of non-collection and the

interest foregone from the timeliness of payments by customers. A company who sells receivables values receiving cash earlier and wants to limit the risk on non-payment. A company who buys receivables wants to earn profit from the full collection of the receivables while understanding the risks of non-collection. The buyer of receivables could find itself in the middle of customer/supplier payment disputes, thus adding to the complexity of determining the proper valuation of supplier receivables.

Mass Electric recommends that the purchase and sale of receivables should be based on an agreement negotiated at arms' length by a willing buyer and seller.[1] No regulation could adequately address the commercial issues that would need to be resolved for such a business arrangement. In addition, the purchase and sale of receivables is not necessary for market development. No active participants in the electric market at this time have requested that Mass. Electric purchase receivables.

V. The Department Should Not Look to Other Jurisdictions for Answers to these Issues without a Complete Understanding of How these Issues are being Resolved in those Jurisdictions

At the Technical Session, many parties brought up examples of other jurisdictions are handling the issues that are being addressed in this docket. Mass. Electric cautions the Department not to look to those jurisdictions for answers or implement the resolutions of those jurisdictions without a complete understanding of how they work. For example, despite the examples given about supplier billing in

[1]Mass. Electric notes, however, that depending on how the utility chose to structure to purchase of the receivables from a corporate organizational perspective, and how the deal between the utility and retail marketer was structured, the utility might require a regulatory approval under applicable law, such as from the Securities and Exchange Commission under the Public Utility Holding Company Act.

New York, to the best of Mass. Electric's information and belief, no customer is receiving a supplier single bill in New York.

VI. The Department Should View these Issues in the Context of Current Market Prices for Wholesale Power, which are Decreasing

Although beyond the scope of this proceeding, Mass. Electric points out that in the Department's review of ways to stimulate the competitive market, Mass Electric has proposed short-term methods which should greatly lower the acquisition costs for marketers and stimulate marketer entry to Massachusetts. Department approval of Mass Electric's proposal in the competition investigation would come as the forward prices in New England are dropping to about 4 to 5 cents per kWh. Given the cost for ancillary services and installed capacity (ICAP), this level of forward market price should translate into all-in wholesale prices of considerably less than 6 cents per kwh. Thus, a very large discrepancy between wholesale prices and default service prices currently exists for marketers to exploit.

VII. Conclusion

For the reasons given in these Comments, Mass. Electric believes that a supplier single bill is not permissible under Massachusetts General Laws. In addition, while Mass. Electric supports the payment posting sequence which pays distribution company arrears first, followed by retail supplier arrears, distribution company current bills, and supplier current bills, Mass. Electric recommends

against a pro rata apportionment of partial payments. Mass. Electric recommends that the Department leave the purchase and sale of receivables to negotiated business deals between distribution companies and retail suppliers, instead of making them the subject of regulation. Finally, Mass. Electric cautions the Department against adopting the procedures of other jurisdictions without a complete understanding of those procedures and their regulatory framework.

Respectfully submitted,
MASSACHUSETTS ELECTRIC COMPANY
NANTUCKET ELECTRIC COMPANY
By their attorney,

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